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any "*trade or calling*"—the latter seeming to exclude isolated transactions, and scarcely suggesting pursuits higher than manual occupations, or at least those which can only be conducted in a public manner. True, servants and apprentices are by this statute forbidden to engage "*in any business*," but under the rule of *ejusdem generis*, this may fairly be confined to things of the same kind with those prohibited to the master. See *Peate v. Dicken* (*supra*), where Baron Parke expressed the conviction that the English statute prohibiting any "tradesman, artificer, workman, or any person whatsoever," from laboring on Sunday, did not apply to attorneys, but that the clause "any person whatsoever" should be confined, under the rule of *ejusdem generis*, to persons of a like kind with those expressly named.

Sec. 3800 of the Virginia Code excepts any person who conscientiously believes that Saturday should be observed as a Sabbath, and who "actually refrains from all secular business and labor on that day . . . and does not on that day disturb any other person." This may seem to indicate that all secular business is within the purview of the previous section above quoted. But the inference is not a necessary one. The purpose of sec. 3800 seems to have been, in order to prevent evasion of the Sunday law, to lay greater restrictions on one who prefers to observe Saturday.

It is a noteworthy tribute to the people of this State, as observers of the Sabbath, that our Supreme Court of Appeals has never been called upon to declare the effect of this statute upon contracts; and that but one criminal case thereunder is reported—the case of a Jew convicted of laboring on Sunday. *Ex parte Marz*, 86 Va. 40.

NORFOLK & WESTERN RY. CO. V. OLD DOMINION BAGGAGE CO.*

Supreme Court of Appeals: At Richmond.

January 17, 1901.

1. CONSTRUCTION OF STATUTES—*Foreign statutes—Construction—Subsequent enactment.* When the construction of a foreign statute has been settled by a number of decisions, and the legislature enacts that statute in the same words, it must be presumed that the construction placed upon the statute was adopted along with the statute.
2. RAILROADS—*Special privileges at stations—Acts 1891-2, p. 695.* Adopting the construction placed by the English courts on the English Railway and Canal Traffic Act of 1854, which must control in the interpretation of the Act of Assembly approved March 3, 1892 (Acts 1891-2, p. 695), railroad companies have the right to exclude from their stations and grounds persons who resort thereto, not for the purpose of using the railroad, nor for the public convenience, but solely for their private gain.

Appeal from a decree of the Circuit Court of the city of Lynchburg, pronounced June 17, 1899, in a suit in chancery, wherein the appellee

* Reported by M. P. Burks, State Reporter.

was the complainant, and the appellant and another, were the defendants.

Reversed.

The opinion states the case.

F. S. Kirkpatrick and *Jos. I. Doran*, for the appellant.

Caskie & Coleman, for the appellee.

HARRISON, J., delivered the opinion of the court.

The bill in this case was filed by the Old Dominion Baggage Transfer Company, alleging that it was engaged at Lynchburg in the baggage transfer business; that the Lynchburg Baggage Transfer Company was engaged in a rival business at the same place, and that complainant and its rival had both theretofore been allowed to enter the grounds of the appellant attached to the Union station, for the purpose of soliciting baggage from persons alighting from the trains at that point; that the appellant had since leased to its rival, the Lynchburg Baggage Transfer Company, the right to solicit incoming baggage at the said station, and had refused to allow complainant to enjoy the same privilege; that, in consequence of being excluded by appellant from its station premises, the private business of complainant had been practically destroyed.

The prayer of the bill is that the Norfolk and Western Railway Company may be restrained from giving, and the Lynchburg Transfer Company from receiving, the undue preference and advantage complained of, and that the appellant may be required to furnish appellee the same or equally as good facilities as are furnished to the Lynchburg Transfer Company in the conduct of its business.

From a decree granting the relief asked by appellee this appeal has been taken.

There is no allegation in the bill that appellee has been prevented or hindered, in any way, from delivering or receiving baggage at the station, for the travelling public employed by it for that purpose, or that the travelling public has, in any way, been inconvenienced or interfered with at the station in the delivery or removal of baggage for which appellee held checks or orders. The sole ground of complaint is that appellee has been denied, by appellant, the privilege of using its station for the purpose of soliciting the delivery of baggage from persons arriving upon its trains. The question presented involves the construction of sec. 3 of an Act to regulate carriers, approved March

3, 1892, which appellee insists is violated by the refusal of appellant to allow it the same rights in the matter of soliciting baggage that is extended to the Lynchburg Transfer Company. That Act is in the following words:

"It shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Acts 1891-2, p. 695.

This law was originally passed by the legislature in 1867 (Acts 1866-67, p. 725), and has been continuously in force until the present time. It was taken from, and is in the words of, sec. 2 of the English Railway and Canal Traffic Act, 1854, 17 and 18 Vict. chap. 31. The legislature having taken from the English Act the language used in sec. 3 of the Act approved March 3, 1892, adopted therewith the construction placed upon that language by the English courts. In *Dowell v. Buchanan*, 3 Leigh, 394, 410, Carr, J., said: "It is admitted that when the construction of an English statute has been settled by a series of decisions, and our legislature enacts that statute *in totidem verbis*, the construction must be considered as adopted along with the statute."

In *Danville v. Pace*, 25 Gratt. 1, 5, Staples, J., said: "It is not to be supposed that the legislature incorporated into our laws an important statute of another State in ignorance of the interpretation given to it by the courts of that State. It must be presumed, rather, that the legislature, in adopting the precise phraseology, intended to adopt along with it the interpretation also."

In *Mangus v. McClelland*, 93 Va. 786, Keith, P., said: "It is a familiar rule of construction that when a statute has been construed by the courts, and is then re-enacted by the Legislature, the construction given to it is presumed to be sanctioned by the legislature, and thenceforth becomes obligatory upon the courts."

This rule of construction has been applied by the Supreme Court to the same section of the English Traffic Act now under consideration, from which was also taken the third section of the Interstate Commerce Act.

In *I. C. C. v. B. & O. R. Co.*, 145 U. S. 263, Mr. Justice Brown

said: "But so far as relates to the question of 'undue preference,' it may be presumed that Congress, in adopting the language of the English Act, had in mind the construction given to these words by the English courts, and intended to incorporate them into the statute."

In view of this settled rule of construction, we must look to the interpretation which had been put upon the English Act, by the English courts, at the time of its adoption by the legislature in 1867, and be guided by those decisions in interpreting the legislation in question.

In the early English case of *Barker v. Midland Ry. Co.*, Eng. Com. Law Reports (C. B.), Vol. 86, p. 45 (1856), the plaintiff sued the railway company for refusing to permit him to drive on its station premises with his omnibus for the purpose of taking persons to the station and bringing others away. All of the judges delivered opinions holding that the case was not within the English Traffic Act (1854), 17 and 18 Vict., saying that it would be extraordinary if any such right existed in one to whom the company owed no direct duty, that the plaintiff was not a person wishing to travel by the railway, or to send goods by it, but a person who carries to and from the railway, persons who are desirous of using, or who have used the railway; that the action had neither principle nor any color of authority to sustain it.

In the case of *Beadell v. Eastern Counties Ry Co.*, Eng. Com. Law Reports (C. B.), Vol. 89, p. 509 (1857), the railway company had agreed with a cab proprietor, in consideration of his paying 600 pounds per annum, to allow him the exclusive privilege of plying for hire with flies within the station. Another cab proprietor sought an injunction against the railway company under the English Traffic Act, but as he failed to allege or prove inconvenience to the public arising from the arrangement, and showed only private damages, an injunction was refused, Williams, J., saying: "The affidavits upon which this motion is founded do not show that the agreement with Clark is not highly beneficial to the public as well as to the company. And it has been expressly laid down, in a case which has not been cited—*In Re Barret*—that the statute in question was passed for the benefit of the public, and not for that of individuals."

In the case of *Painter v. The London, Brighton & S. C. Ry. Co.*, Eng. Com. Law Reports (C. B.), Vol. 89, p. 701 (1857), the railway company had granted exclusive permission to a limited number of fly proprietors to ply for hire within the station. One of the fly proprietors who had been excluded from participation in the arrange-

ment sought an injunction against the company, under the English Traffic Act, which was refused, Creswell, J., saying: "I am of opinion that no ground is presented to justify the interference of the court. Before we put the powers of the Act in motion we must be satisfied that there is some substantial injury or inconvenience to the public, and that the complaint is *bona fide* made on behalf of the public." Williams, J., said: "The complaint must come from those who use the railway."

These cases had all been decided some years before the adoption of the English Act by the Legislature in 1867. The construction put, by them, upon the Act has since been repeatedly approved by the English courts. In the recent case of *Perth Gen. Station Com't v. Ross*, L. R. House of Lords (1897) Appeal Cases, Vol. 1, 479, it was held that a railway company owning a hotel of their own within the limits of the station may qualify their permission to other hotel proprietors and their servants to have free access to the platform with the condition that on those occasions no hotel servant should wear a distinctive badge or livery, Lord McNaghten saying: "The question seems to be this: Is the respondent, when not using or desirous of using the railway, entitled as of right, by himself or his servants, to enter the station? Or to put the question in simpler form, are the appellants entitled to exclude all persons other than those who use or are desirous of using the railway? It seems to me that the question of law was decided, and decided rightly, forty years ago by the court of Common Pleas in the case of *Barker v. Midland Ry. Co.*," *supra*. Thus as late as 1897 the construction put upon the English Act in 1856 is adhered to and approved.

Treating this construction as incorporated into section 3 of the Act of 1892, when that act was adopted by the legislature in 1867, it is obvious that the position taken by appellee cannot be maintained.

Inasmuch as the construction put upon the statute in question by the English courts, prior to our adoption of it, is conclusive of the case at bar, we have deemed it unnecessary to cite numerous decisions of the American courts placing the same construction upon statutes similar to our own.

For these reasons the decree appealed from must be reversed, and this court will enter such order as the lower court ought to have entered dismissing appellee's bill with costs. *Reversed.*

NOTE.—In a majority of the American States, considerations of public convenience and antagonism to monopolies have influenced the courts to depart from

the English view adopted in the principal case, regardless of the circumstance that the statutory enactments upon which the question rests are, in the main, similar to, or borrowed from, English legislation. This departure may be justified under a well-established qualification of the rule that when a statute of one State or country is borrowed by another, the settled construction in the original State is presumed to have been incorporated into the statute when re-enacted elsewhere, the qualification being that such construction will not be followed when it plainly contravenes the general spirit and policy of local laws. Endlich on *Interp. of Statutes*, 371; *Pratt v. Miller*, 109 Mo. 78, 32 Am. St. Rep. 656; *Oleson v. Wilson*, 20 Mont. 544, 69 Am. St. Rep. 639.

It was for the court to decide whether the construction of the English courts is contrary to the spirit and policy of the local law. And having decided that it is not, the court could scarcely have rejected the English construction.

The English rule, however—certainly so far as adopted at the time the statute was re-enacted in Virginia—does not give the railway company the absolute right, under all circumstances, to exclude other baggage-men or hackmen from its station grounds. On the contrary, it was held in *Marriott v. London etc. R. Co* (C. B.), 87 E. C. L. 498, that if the exclusion were unreasonable, and resulted in inconvenience to the public—in that case compelling the omnibus of the plaintiff to discharge its passengers, with their luggage, at the entrance gate, some seventy-five feet from the station, “in all weathers,” while admitting the vehicles of the favored rival to the door of the booking office—an injunction would lie.

In the subsequent case of *Beadell v. Eastern etc. Railway Co.*, 89 E. C. L. 509, cited in the principal case, it was said that the *Marriott* case (*supra*) was decided on its own peculiar circumstances. In the *Beadell* case the proof was that all cabs were permitted to enter the station for the purpose of setting down passengers, but all except those of a certain proprietor were required to withdraw. There was no suggestion, as the court said, that this in any manner interfered with public convenience.

In the still later case of *Painter v. London etc. R. Co.*, 89 E. C. L. 701, also cited in the principal case, it appeared that by admitting to the station grounds only certain designated hackmen, occasional inconvenience resulted to the public. But Creswell, J., held that in order to interfere by injunction the court must be satisfied that “there is some substantial injury or inconvenience to the public, and that the complaint is *bona fide* on behalf of the public.” Williams, J., added, “The complaint must come from those who use the railway.”

The English cases seem to hold that whether such exclusive privileges will be upheld or not, depends upon the circumstances of each case. If the particular regulation in question results in substantial public inconvenience, it will be condemned, otherwise it will be sustained. That is to say, the mere fact that one hackman or baggage-man is permitted to ply for hire in the carrier's station while the privilege is denied to another, gives the latter no cause to complain. But if the action of the carrier be so unreasonable as to interfere with public convenience, such act is a proper ground of complaint. Viewed in this light—and there seems to be nothing in the principal case opposed—the English doctrine, now become the Virginia doctrine, has much to commend it.